

## **National Defense Authorization Act for Fiscal Year 2004**

[Public Law 108–136, approved Nov. 24, 2003]

[As Amended Through P.L. 117–263, Enacted December 23, 2022]

【Currency: This publication is a compilation of the text of Public Law 108–136. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

### **TITLE III—OPERATION AND MAINTENANCE**

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#### **Subtitle B—Environmental Provisions**

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#### **SEC. 320. [10 U.S.C. 113 note] REPORT REGARDING IMPACT OF CIVILIAN COMMUNITY ENCROACHMENT AND CERTAIN LEGAL REQUIREMENTS ON MILITARY INSTALLATIONS AND RANGES AND PLAN TO ADDRESS ENCROACHMENT.**

(a) **STUDY REQUIRED.**—The Secretary of Defense shall conduct a study on the impact, if any, of the following types of encroachment issues affecting military installations and operational ranges:

(1) Civilian community encroachment on those military installations and ranges whose operational training activities, research, development, test, and evaluation activities, or other operational, test and evaluation, maintenance, storage, disposal, or other support functions require, or in the future reasonably may require, safety or operational buffer areas. The requirement for such a buffer area may be due to a variety of factors, including air operations, ordnance operations and storage, or other activities that generate or might generate noise, electro-magnetic interference, ordnance arcs, or environmental impacts that require or may require safety or operational buffer areas.

(2) Compliance by the Department of Defense with State Implementation Plans for Air Quality under section 110 of the Clean Air Act (42 U.S.C. 7410).

(3) Compliance by the Department of Defense with the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.).

(b) MATTERS TO BE INCLUDED WITH RESPECT TO CIVILIAN COMMUNITY ENCROACHMENTS.—With respect to paragraph (1) of subsection (a), the study shall include the following:

(1) A list of all military installations described in subsection (a)(1) at which civilian community encroachment is occurring.

(2) A description and analysis of the types and degree of such civilian community encroachment at each military installation included on the list.

(3) An analysis, including views and estimates of the Secretary of Defense, of the current and potential future impact of such civilian community encroachment on operational training activities, research, development, test, and evaluation activities, and other significant operational, test and evaluation, maintenance, storage, disposal, or other support functions performed by military installations included on the list. The analysis shall include the following:

(A) A review of training and test ranges at military installations, including laboratories and technical centers of the military departments, included on the list.

(B) A description and explanation of the trends of such encroachment, as well as consideration of potential future readiness problems resulting from unabated encroachment.

(4) An estimate of the costs associated with current and anticipated partnerships between the Department of Defense and non-Federal entities to create buffer zones to preclude further development around military installations included on the list, and the costs associated with the conveyance of surplus property around such military installations for purposes of creating buffer zones.

(5) Options and recommendations for possible legislative or budgetary changes necessary to mitigate current and anticipated future civilian community encroachment problems.

(c) MATTERS TO BE INCLUDED WITH RESPECT TO COMPLIANCE WITH SPECIFIED LAWS.—With respect to paragraphs (2) and (3) of subsection (a), the study shall include the following:

(1) A list of all military installations and other locations at which the Armed Forces are encountering problems related to compliance with the laws specified in such paragraphs.

(2) A description and analysis of the types and degree of compliance problems encountered.

(3) An analysis, including views and estimates of the Secretary of Defense, of the current and potential future impact of such compliance problems on the following functions performed at military installations:

(A) Operational training activities.

(B) Research, development, test, and evaluation activities.

(C) Other significant operational, test and evaluation, maintenance, storage, disposal, or other support functions.

(4) A description and explanation of the trends of such compliance problems, as well as consideration of potential future readiness problems resulting from such compliance problems.

(d) **PLAN TO RESPOND TO ENCROACHMENT ISSUES.**—On the basis of the study conducted under subsection (a), including the specific matters required to be addressed by subsections (b) and (c), the Secretary of Defense shall prepare a plan to respond to the encroachment issues described in subsection (a) affecting military installations and operational ranges.

(e) **REPORTING REQUIREMENTS.**—The Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives the following reports regarding the study conducted under subsection (a), including the specific matters required to be addressed by subsections (b) and (c):

(1) Not later than January 31, 2004, an interim report describing the progress made in conducting the study and containing the information collected under the study as of that date.

(2) Not later than January 31, 2006, a report containing the results of the study and the encroachment response plan required by subsection (d).

(3) Not later than January 31, 2007, and each January 31 thereafter through January 31, 2010, a report describing the progress made in implementing the encroachment response plan.

**SEC. 321. COOPERATIVE WATER USE MANAGEMENT RELATED TO FORT HUACHUCA, ARIZONA, AND SIERRA VISTA SUBWATERSHED.**

(a) **LIMITATION ON FEDERAL RESPONSIBILITY FOR CIVILIAN WATER CONSUMPTION IMPACTS.**—

(1) **LIMITATION.**—For purposes of section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536), concerning any present and future Federal agency action at Fort Huachuca, Arizona, water consumption by State, local, and private entities off of the installation that is not a direct or indirect effect of the agency action or an effect of other activities that are interrelated or interdependent with that agency action, shall not be considered in determining whether such agency action is likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat.

(2) **VOLUNTARY REGIONAL CONSERVATION EFFORTS.**—Nothing in this subsection shall prohibit Federal agencies operating at Fort Huachuca from voluntarily undertaking efforts to mitigate water consumption.

(3) **DEFINITION OF WATER CONSUMPTION.**—In this subsection, the term “water consumption” means all water use off of the installation from any source.

(4) **EFFECTIVE DATE.**—This subsection applies only to Federal agency actions regarding which the Federal agency involved determines that consultation, or reinitiation of consultation, under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536) is required with regard to an agency action at Fort Huachuca on or after the date of the enactment of this Act.

(b) **RECOGNITION OF UPPER SAN PEDRO PARTNERSHIP.**—Congress hereby recognizes the Upper San Pedro Partnership, Arizona, a partnership of Fort Huachuca, Arizona, other Federal, State, and local governmental and nongovernmental entities, and its efforts to establish a collaborative water use management program in the Sierra Vista Subwatershed, Arizona, to achieve the sustainable yield of the regional aquifer, so as to protect the Upper San Pedro River, Arizona, and the San Pedro Riparian National Conservation Area, Arizona.

(c) **REPORT ON WATER USE MANAGEMENT AND CONSERVATION OF REGIONAL AQUIFER.**—

(1) **IN GENERAL.**—The Secretary of the Interior shall prepare, in consultation with the Secretary of Agriculture and the Secretary of Defense and in cooperation with the other members of the Partnership, a report on the water use management and conservation measures that have been implemented and are needed to restore and maintain the sustainable yield of the regional aquifer by and after September 30, 2011. The Secretary of the Interior shall submit the report to Congress not later than December 31, 2004.

(2) **PURPOSE.**—The purpose of the report is to set forth measurable annual goals for the reduction of the overdrafts of the groundwater of the regional aquifer, to identify specific water use management and conservation measures to facilitate the achievement of such goals, and to identify impediments in current Federal, State, and local laws that hinder efforts on the part of the Partnership to mitigate water usage in order to restore and maintain the sustainable yield of the regional aquifer by and after September 30, 2011.

(3) **REPORT ELEMENTS.**—The report shall use data from existing and ongoing studies and include the following elements:

(A) The net quantity of water withdrawn from and recharged to the regional aquifer in the one-year period preceding the date of the submission of the report.

(B) The quantity of the overdraft of the regional aquifer to be reduced by the end of each of fiscal years 2005 through 2011 to achieve sustainable yield.

(C) With respect to the reduction of overdraft for each fiscal year as specified under subparagraph (B), an allocation of responsibility for the achievement of such reduction among the water-use controlling members of the Partnership who have the authority to implement measures to achieve such reduction.

(D) The water use management and conservation measures to be undertaken by each water-use controlling member of the Partnership to contribute to the reduction of the overdraft for each fiscal year as specified under subparagraph (B), and to meet the responsibility of each such member for each such reduction as allocated under subparagraph (C), including—

(i) a description of each measure;

(ii) the cost of each measure;

(iii) a schedule for the implementation of each measure;

(iv) a projection by fiscal year of the amount of the contribution of each measure to the reduction of the overdraft; and

(v) a list of existing laws that impede full implementation of any measure.

(E) The monitoring and verification activities to be undertaken by the Partnership to measure the reduction of the overdraft for each fiscal year and the contribution of each member of the Partnership to the reduction of the overdraft.

(d) ANNUAL REPORT ON PROGRESS TOWARD SUSTAINABLE YIELD.—

(1) IN GENERAL.—Not later than October 31, 2005, and each October 31 thereafter through 2011, the Secretary of the Interior shall submit, on behalf of the Partnership, to Congress a report on the progress of the Partnership during the preceding fiscal year toward achieving and maintaining the sustainable yield of the regional aquifer by and after September 30, 2011.

(2) REPORT ELEMENTS.—Each report shall include the following:

(A) The quantity of the overdraft of the regional aquifer reduced during the reporting period, and whether such reduction met the goal specified for such fiscal year under subsection (c)(3)(B).

(B) The water use management and conservation measures undertaken by each water-use controlling member of the Partnership in the fiscal year covered by such report, including the extent of the contribution of such measures to the reduction of the overdraft for such fiscal year.

(C) The legislative accomplishments made during the fiscal year covered by such report in removing legal impediments that hinder the mitigation of water use by members of the Partnership.

(e) VERIFICATION INFORMATION.—Information used to verify overdraft reductions of the regional aquifer shall include at a minimum the following:

(1) The annual report of the Arizona Corporation Commission on annual groundwater pumpage of the private water companies in the Sierra Vista Subwatershed.

(2) The San Pedro base flow monitoring record of the Charleston flow gauge of the United States Geological Survey.

(3) Current surveys of the groundwater levels in area wells as reported by the Arizona Department of Water Resources and by Federal agencies.

(f) SENSE OF CONGRESS.—It is the sense of Congress that any future appropriations to the Partnership should take into account whether the Partnership has met its annual goals for overdraft reduction.

(g) DEFINITIONS.—In this section:

(1) The term “Partnership” means the Upper San Pedro Partnership, Arizona.

(2) The term “regional aquifer” means the Sierra Vista Subwatershed regional aquifer, Arizona.

(3) The term “water-use controlling member” has the meaning given that term by the Partnership.

**SEC. 322. TASK FORCE ON RESOLUTION OF CONFLICT BETWEEN MILITARY TRAINING AND ENDANGERED SPECIES PROTECTION AT BARRY M. GOLDWATER RANGE, ARIZONA.**

(a) **TASK FORCE.**—The Secretary of Defense shall establish a task force to determine and assess various means of resolving the conflict between the dual objectives at Barry M. Goldwater Range, Arizona, of the full utilization of live ordnance delivery areas for military training and the protection of endangered species that are present at Barry M. Goldwater Range.

(b) **COMPOSITION.**—The task force shall be composed of the following members:

(1) The Air Force range officer, who shall serve as chairperson of the task force.

(2) The range officer at Barry M. Goldwater Range.

(3) The commander of Luke Air Force Base, Arizona.

(4) The commander of Marine Corps Air Station, Yuma, Arizona.

(5) The Director of the United States Fish and Wildlife Service.

(6) The manager of the Cabeza Prieta National Wildlife Refuge, Arizona.

(7) A representative of the Department of Game and Fish of the State of Arizona, selected by the Secretary in consultation with the Governor of the State of Arizona.

(8) A representative of a wildlife interest group in the State of Arizona, selected by the Secretary in consultation with wildlife interest groups in the State of Arizona.

(9) A representative of an environmental interest group (other than a wildlife interest group) in the State of Arizona, as selected by the Secretary in consultation with environmental interest groups in the State of Arizona.

(c) **DUTIES.**—The task force shall—

(1) assess the effects of the presence of endangered species on military training activities in the live ordnance delivery areas at Barry M. Goldwater Range and in any other areas of the range that are adversely effected by the presence of endangered species;

(2) determine various means of addressing any significant adverse effects on military training activities on Barry M. Goldwater Range that are identified pursuant to paragraph (1); and

(3) determine the benefits and costs associated with the implementation of each means identified under paragraph (2).

(d) **USE OF EXPERTS.**—The chairperson of the task force may secure for the task force the services of such experts with respect to the duties of the task force as the chairperson considers advisable to carry out such duties.

(e) **REPORT.**—Not later than February 28, 2005, the task force shall submit to Congress a report containing—

- (1) a description of the assessments and determinations made under subsection (c);
- (2) such recommendations for legislative and administrative action as the task force considers appropriate; and
- (3) an evaluation of the utility of task force proceedings as a means of resolving conflicts between military training objectives and protection of endangered species at other military training and testing ranges.

**SEC. 323. [42 U.S.C. 300j-18 note] PUBLIC HEALTH ASSESSMENT OF EXPOSURE TO PERCHLORATE.**

(a) **EPIDEMIOLOGICAL STUDY OF EXPOSURE TO PERCHLORATE.**—The Secretary of Defense shall provide for an independent epidemiological study of exposure to perchlorate in drinking water. The entity conducting the study shall—

- (1) assess the incidence of thyroid disease and measurable effects of thyroid function in relation to exposure to perchlorate;
- (2) ensure that the study is of sufficient scope and scale to permit the making of meaningful conclusions of the measurable public health threat associated with exposure to perchlorate, especially the threat to sensitive subpopulations; and
- (3) examine thyroid function, including measurements of urinary iodine and thyroid hormone levels, in a sufficient number of pregnant women, neonates, and infants exposed to perchlorate in drinking water and match measurements of perchlorate levels in the drinking water of each study participant in order to permit the development of meaningful conclusions on the public health threat to individuals exposed to perchlorate.

(b) **REVIEW OF EFFECTS OF PERCHLORATE ON ENDOCRINE SYSTEM.**—The Secretary shall provide for an independent review of the effects of perchlorate on the human endocrine system. The entity conducting the review shall assess—

- (1) available data on human exposure to perchlorate, including clinical data and data on exposure of sensitive subpopulations, and the levels at which health effects were observed; and
- (2) available data on other substances that have endocrine effects similar to perchlorate to which the public is frequently exposed.

(c) **PERFORMANCE OF STUDY AND REVIEW.**—(1) The Secretary shall provide for the performance of the study under subsection (a) through the Centers for Disease Control, the National Institutes of Health, or another Federal entity with experience in environmental toxicology selected by the Secretary.

(2) The Secretary shall provide for the performance of the review under subsection (b) through the Centers for Disease Control, the National Institutes of Health, or another appropriate Federal research entity with experience in human endocrinology selected by the Secretary. The Secretary shall ensure that the panel conducting the review is composed of individuals with expertise in human endocrinology.

(d) **REPORTING REQUIREMENTS.**—Not later than June 1, 2005, the Federal entities conducting the study and review under this

section shall submit to the Secretary reports containing the results of the study and review.

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### Subtitle C—Workplace and Depot Issues

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#### **SEC. 334. [10 U.S.C. 2304 note] RESOURCES-BASED SCHEDULES FOR COMPLETION OF PUBLIC-PRIVATE COMPETITIONS FOR PERFORMANCE OF DEPARTMENT OF DEFENSE FUNCTIONS.**

(a) APPLICATION OF TIMEFRAMES.—Any interim or final deadline or other schedule-related milestone for the completion of a Department of Defense public-private competition shall be established solely on the basis of considered research and sound analysis regarding the availability of sufficient personnel, training, and technical resources to the Department of Defense to carry out such competition in a timely manner.

(b) EXTENSION OF TIMEFRAMES.—(1) The Department of Defense official responsible for managing a Department of Defense public-private competition shall extend any interim or final deadline or other schedule-related milestone established (consistent with subsection (a)) for the completion of the competition if the official determines that the personnel, training, or technical resources available to the Department of Defense to carry out the competition in a timely manner are insufficient.

(2) A determination under this subsection shall be made pursuant to procedures prescribed by the Secretary of Defense.

#### **SEC. 335. [10 U.S.C. 2461 note] DELAYED IMPLEMENTATION OF REVISED OFFICE OF MANAGEMENT AND BUDGET CIRCULAR A-76 BY DEPARTMENT OF DEFENSE PENDING REPORT.**

(a) LIMITATION PENDING REPORT.—No studies or competitions may be conducted under the policies and procedures contained in the revised Office of Management and Budget Circular A-76 dated May 29, 2003 (68 Fed. Reg. 32134), relating to the possible contracting out of commercial activities being performed, as of such date, by employees of the Department of Defense, until the end of the 45-day period beginning on the date on which the Secretary of Defense submits to Congress a report on the effects of the revisions.

(b) CONTENT OF REPORT.—The report required by subsection (a) shall contain, at a minimum, specific information regarding the following:

(1) The extent to which the revised circular will ensure that employees of the Department of Defense have the opportunity to compete to retain their jobs.

(2) The extent to which the revised circular will provide appeal and protest rights to employees of the Department of Defense.

(3) Identify safeguards in the revised circular to ensure that all public-private competitions are fair, appropriate, and comply with requirements of full and open competition.

(4) The plans of the Department to ensure an appropriate phase-in period for the revised circular, as recommended by



the Commercial Activities Panel of the Government Accounting Office in its April 2002 report to Congress, including recommendations for any legislative changes that may be required to ensure a smooth and efficient phase-in period.

(5) The plans of the Department to provide training to employees of the Department of Defense regarding the revised circular, including how the training will be funded, how employees will be selected to receive the training, and the number of employees likely to receive the training.

(6) The plans of the Department to collect and analyze data on the costs and quality of work contracted out or retained in-house as a result of a sourcing process conducted under the revised circular.

【Section 336 was repealed by section 812(b)(49) of division A of Public Law 115–232.】

**SEC. 337. [10 U.S.C. 113 note] HIGH-PERFORMING ORGANIZATION BUSINESS PROCESS REENGINEERING PILOT PROGRAM.**

(a) **PILOT PROGRAM.**—The Secretary of Defense shall establish a pilot program under which the Secretary concerned shall create, or continue the implementation of, high-performing organizations through the conduct of a Business Process Reengineering initiative at selected military installations and facilities under the jurisdiction of the Secretary concerned.

(b) **EFFECT OF PARTICIPATION IN PILOT PROGRAM.**—(1) During the period of an organization's participation in the pilot program, including the periods referred to in paragraphs (2) and (3) of subsection (f), the Secretary concerned may not require the organization to undergo any Office of Management and Budget Circular A–76 competition or other public-private competition involving any function of the organization covered by the Business Process Reengineering initiative. The organization may elect to undergo such a competition as part of the initiative.

(2) Civilian employee or military personnel positions of the participating organization that are part of the Business Process Reengineering initiative shall be counted toward any numerical goals, target, or quota that the Secretary concerned is required or requested to meet during the term of the pilot program regarding the number of positions to be covered by public-private competitions.

(c) **ELIGIBLE ORGANIZATIONS.**—Subject to subsection (d), the Secretary concerned may select two types of organizations to participate in the pilot program:

(1) Organizations that underwent a Business Process Reengineering initiative within the preceding five years, achieved major performance enhancements under the initiative, and will be able to sustain previous or achieve new performance goals through the continuation of its existing or completed Business Process Reengineering plan.

(2) Organizations that have not undergone or have not successfully completed a Business Process Reengineering initiative, but which propose to achieve, and reasonably could reach, enhanced performance goals through implementation of a Business Process Reengineering initiative.

(d) **ADDITIONAL ELIGIBILITY REQUIREMENTS.**—(1) To be eligible for selection to participate in the pilot program under subsection (c)(1), an organization described in such subsection shall demonstrate, to the satisfaction of the Secretary concerned, the completion of a total organizational assessment that resulted in enhanced performance measures at least comparable to those performance measures that might be achieved through competitive sourcing.

(2) To be eligible for selection to participate in the pilot program under subsection (c)(2), an organization described in such subsection shall identify, to the satisfaction of the Secretary concerned—

(A) functions, processes, and measures to be studied under the Business Process Reengineering initiative;

(B) adequate resources to carry out the Business Process Reengineering initiative; and

(C) labor-management agreements in place to ensure effective implementation of the Business Process Reengineering initiative.

(e) **LIMITATION ON NUMBER OF PARTICIPANTS.**—Total participants in the pilot program is limited to eight military installations and facilities, with some participants to be drawn from organizations described in subsection (c)(1) and some participants to be drawn from organizations described in subsection (c)(2).

(f) **IMPLEMENTATION AND DURATION.**—(1) The implementation and management of a Business Process Reengineering initiative under the pilot program shall be the responsibility of the commander of the military installation or facility at which the Business Process Reengineering initiative is carried out.

(2) An organization selected to participate in the pilot program shall be given a reasonable initial period, to be determined by the Secretary concerned, in which the organization must implement the Business Process Reengineering initiative. At the end of this period, the Secretary concerned shall determine whether the organization has achieved initial progress toward designation as a high-performing organization. In the absence of such progress, the Secretary concerned shall terminate the organization's participation in the pilot program.

(3) If an organization successfully completes implementation of the Business Process Reengineering initiative under paragraph (2), the Secretary concerned shall designate the organization as a high-performing organization and grant the organization an additional five-year period in which to achieve projected or planned efficiencies and savings under the pilot program.

(g) **REVIEWS AND REPORTS.**—The Secretary concerned shall conduct annual performance reviews of the participating organizations or functions under the jurisdiction of the Secretary concerned. Reviews and reports shall evaluate organizational performance measures or functional performance measures and determine whether organizations are performing satisfactorily for purposes of continuing participation in the pilot program.

(h) **PERFORMANCE MEASURES.**—Performance measures utilized in the pilot program should include the following, which shall be measured against organizational baselines determined before participation in the pilot program:

(1) Costs, savings, and overall financial performance of the organization.

(2) Organic knowledge, skills or expertise.

(3) Efficiency and effectiveness of key functions or processes.

(4) Efficiency and effectiveness of the overall organization.

(5) General customer satisfaction.

(i) DEFINITIONS.—In this section

(1) The term “Business Process Reengineering” refers to an organization’s complete and thorough analysis and reengineering of mission and support functions and processes to achieve improvements in performance, including a fundamental reshaping of the way work is done to better support an organization’s mission and reduce costs.

(2) The term “high-performing organization” means an organization whose performance exceeds that of comparable providers, whether public or private.

(3) The term “Secretary concerned” means the Secretary of a military department and the Secretary of Defense, with respect to matters concerning the Defense Agencies.

**SEC. 338. [10 U.S.C. 5013 note] MULTI-TRADES DEMONSTRATION PROJECT.**

(a) DEMONSTRATION PROJECT AUTHORIZED.—In accordance with section 4703 of title 5, United States Code, the Secretary of a military department may carry out a demonstration project at facilities described in subsection (b) under which workers who are certified at the journey level as able to perform multiple trades shall be promoted by one grade level.

(b) SELECTION REQUIREMENTS.—As a condition on eligibility for selection to participate in the demonstration project, the head of an Air Force Air Logistics Complex, Navy Fleet Readiness Center, Navy shipyard, Marine Corps Logistics Base, or Army depot shall submit to the Secretary of the military department concerned a business case analysis and concept plan—

(1) that, on the basis of the results of analysis of work processes, demonstrate that process improvements would result from the trade combinations proposed to be implemented under the demonstration project; and

(2) that describes the improvements in cost, quality, or schedule of work that are anticipated to result from the participation in the demonstration project.

(c) PARTICIPATING WORKERS.—(1) Actual worker participation in the demonstration project shall be determined through competitive selection. Not more than 15 percent of the wage grade journeyman at a demonstration project location may be selected to participate.

(2) Job descriptions and competency-based training plans must be developed for each worker while in training under the demonstration project and once certified as a multi-trade worker. A certified multi-trade worker who receives a pay grade promotion under the demonstration project must use each new skill during at least 25 percent of the worker’s work year.

(d) DURATION.—The demonstration project shall be conducted during fiscal years 2008 through 2023.

(e) REPORT.—Not later than January 15, 2024, the Secretary of each military department that carried out a demonstration project under this section shall submit a report to Congress describing the results of the demonstration project. Each such report shall include the Secretary's recommendation on whether permanent multi-trade authority should be authorized.

(f) GAO EVALUATION.—Each Secretary who submits a report under subsection (e) shall transmit a copy of the report to the Comptroller General. Within 90 days after receiving a report, the Comptroller General shall submit to Congress an evaluation of that report.

## Subtitle D—

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### SEC. 343. PERMANENT AUTHORITY FOR PURCHASE OF CERTAIN MUNICIPAL SERVICES AT INSTALLATIONS IN MONTEREY COUNTY, CALIFORNIA.

(a) AUTHORITY.—Subject to section 2465 of title 10, United States Code, public works, utility, and other municipal services needed for the operation of any Department of Defense asset in Monterey County, California, may be purchased from government agencies located in that county.

(c) REPEAL OF EXISTING TEMPORARY AUTHORITY.—[Omitted-Amendment]

### SEC. 344. [117 Stat. 1338] DEPARTMENT OF DEFENSE TELECOMMUNICATIONS BENEFIT.

(a) PROVISION OF BENEFIT.—(1) The Secretary of Defense shall provide, wherever practicable, prepaid phone cards, packet based telephony service, or an equivalent telecommunications benefit which includes access to telephone service, to members of the Armed Forces stationed outside the United States who (as determined by the Secretary) are eligible for combat zone tax exclusion benefits due to their service in direct support of a contingency operation to enable those members to make telephone calls without cost to the member.

(2) As soon as possible after the date of the enactment of the John Warner National Defense Authorization Act for Fiscal Year 2007, the Secretary shall provide, wherever practicable, prepaid phone cards, packet based telephony service, or an equivalent telecommunications benefit which includes access to telephone service to members of the Armed Forces who, although are no longer directly supporting a contingency operation, are hospitalized as a result of wounds or other injuries incurred while serving in direct support of a contingency operation.

(b) MONTHLY BENEFIT.—The value of the benefit provided under subsection (a) to any member in any month, to the extent the benefit is provided from amounts available to the Department of Defense, may not exceed—

(1) \$40; or

(2) 120 calling minutes, if the cost to the Department of Defense of providing such number of calling minutes is less than the amount specified in paragraph (1).

(c) **TERMINATION OF BENEFIT.**—The authority to provide a benefit under subsection (a)(1) to a member directly supporting a contingency operation shall terminate on the date that is 60 days after the date on which the Secretary determines that the contingency operation has ended.

(d) **FUNDING.**—(1)(A) In carrying out the program under this section, the Secretary shall maximize the use of existing Department of Defense telecommunications programs and capabilities, free or reduced-cost services of private sector entities, and programs to enhance morale and welfare.

(B) The Secretary may not award a contract to a commercial firm for the purposes of subparagraph (A) other than through the use of competitive procedures.

(2) The Secretary may accept gifts and donations in order to defray the costs of the program under this section. Such gifts and donations may be accepted from—

(A) any foreign government;

(B) any foundation or other charitable organization, including any that is organized or operates under the laws of a foreign country; and

(C) any source in the private sector of the United States or a foreign country.

(e) **DEPLOYMENT OF ADDITIONAL TELEPHONE EQUIPMENT OR INTERNET ACCESS.**—If the Secretary of Defense determines that, in order to implement this section as quickly as practicable, it is necessary to provide additional telephones or Internet service in any area to facilitate telephone calling or packet based telephony for which benefits are provided under this section, the Secretary may, consistent with the availability of resources, award competitively bid contracts to one or more commercial entities for the provision and installation of telephones or Internet access in that area.

(f) **NO COMPROMISE OF MILITARY MISSION.**—The Secretary of Defense should not take any action under this section that would compromise the military objectives or mission of the Department of Defense.

(g) **CONTINGENCY OPERATION DEFINED.**—In this section, the term “contingency operation” has the meaning given that term in section 101(a)(13) of title 10, United States Code. The term includes Operation Iraqi Freedom and Operation Enduring Freedom.

## **TITLE VII—HEALTH CARE PROVISIONS**

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### **Subtitle C—Planning, Programming, and Management**

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【Section 723 (10 U.S.C. 1073 note) repealed by section 711(d) of Public Law 110–181】

**SEC. 724. [10 U.S.C. 1079 note] PLAN FOR PROVIDING HEALTH COVERAGE INFORMATION TO MEMBERS, FORMER MEMBERS, AND DEPENDENTS ELIGIBLE FOR CERTAIN HEALTH BENEFITS.**

(a) **HEALTH INFORMATION PLAN REQUIRED.**—The Secretary of Defense shall develop a plan to—

(1) ensure that each household that includes one or more eligible persons is provided information concerning—

(A) the extent of health coverage provided by sections 1079 or 1086 of title 10, United States Code, for each such person;

(B) the costs, including the limits on such costs, that each such person is required to pay for such health coverage;

(C) sources of information for locating TRICARE-authorized providers in the household's locality; and

(D) methods to obtain assistance in resolving difficulties encountered with billing, payments, eligibility, locating TRICARE-authorized providers, collection actions, and such other issues as the Secretary considers appropriate;

(2) provide mechanisms to ensure that each eligible person has access to information identifying TRICARE-authorized providers in the person's locality who have agreed to accept new patients under section 1079 or 1086 of title 10, United States Code, and to ensure that such information is periodically updated;

(3) provide mechanisms to ensure that each eligible person who requests assistance in locating a TRICARE-authorized provider is provided such assistance;

(4) provide information and recruitment materials and programs aimed at attracting participation of health care providers as necessary to meet health care access requirements for all eligible persons; and

(5) provide mechanisms to allow for the periodic identification by the Department of Defense of the number and locality of eligible persons who may intend to rely on TRICARE-authorized providers for health care services.

(b) **IMPLEMENTATION OF PLAN.**—The Secretary of Defense shall implement the plan required by subsection (a) with respect to any contract entered into by the Department of Defense after May 31, 2003, for managed health care.

(c) **DEFINITIONS.**—In this section:

(1) The term “eligible person” means a person eligible for health benefits under section 1079 or 1086 of title 10, United States Code.

(2) The term “TRICARE-authorized provider” means a facility, doctor, or other provider of health care services—

(A) that meets the licensing and credentialing certification requirements in the State where the services are rendered;

(B) that meets requirements under regulations relating to TRICARE for the type of health care services rendered; and

(C) that has accepted reimbursement by the Secretary of Defense as payment for services rendered during the 12-

month period preceding the date of the most recently updated provider information provided to households under the plan required by subsection (a).

(d) **SUBMISSION OF PLAN.**—Not later than March 31, 2004, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives the plan required by subsection (a), together with a schedule for implementation of the plan.

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**SEC. 727. [38 U.S.C. 320 note] JOINT PROGRAM FOR DEVELOPMENT AND EVALUATION OF INTEGRATED HEALING CARE PRACTICES FOR MEMBERS OF THE ARMED FORCES AND VETERANS.**

(a) **PROGRAM.**—The Secretary of Defense and the Secretary of Veterans Affairs may conduct a program to develop and evaluate integrated healing care practices for members of the Armed Forces and veterans. Any such program shall be carried out through the Department of Veterans Affairs-Department of Defense Joint Executive Committee established under section 320 of title 38, United States Code.

(b) **SOURCE OF DOD FUNDS.**—Amounts authorized to be appropriated by this Act for the Defense Health Program may be used for the program under subsection (a).

## TITLE VII—

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**SEC. 724. [10 U.S.C. 1079 note] PLAN FOR PROVIDING HEALTH COVERAGE INFORMATION TO MEMBERS, FORMER MEMBERS, AND DEPENDENTS ELIGIBLE FOR CERTAIN HEALTH BENEFITS.**

(a) **HEALTH INFORMATION PLAN REQUIRED.**—The Secretary of Defense shall develop a plan to—

(1) ensure that each household that includes one or more eligible persons is provided information concerning—

(A) the extent of health coverage provided by sections 1079 or 1086 of title 10, United States Code, for each such person;

(B) the costs, including the limits on such costs, that each such person is required to pay for such health coverage;

(C) sources of information for locating TRICARE-authorized providers in the household's locality; and

(D) methods to obtain assistance in resolving difficulties encountered with billing, payments, eligibility, locating TRICARE-authorized providers, collection actions, and such other issues as the Secretary considers appropriate;

(2) provide mechanisms to ensure that each eligible person has access to information identifying TRICARE-authorized providers in the person's locality who have agreed to accept new patients under section 1079 or 1086 of title 10, United States Code, and to ensure that such information is periodically updated;

(3) provide mechanisms to ensure that each eligible person who requests assistance in locating a TRICARE-authorized provider is provided such assistance;

(4) provide information and recruitment materials and programs aimed at attracting participation of health care providers as necessary to meet health care access requirements for all eligible persons; and

(5) provide mechanisms to allow for the periodic identification by the Department of Defense of the number and locality of eligible persons who may intend to rely on TRICARE-authorized providers for health care services.

(b) IMPLEMENTATION OF PLAN.—The Secretary of Defense shall implement the plan required by subsection (a) with respect to any contract entered into by the Department of Defense after May 31, 2003, for managed health care.

(c) DEFINITIONS.—In this section:

(1) The term “eligible person” means a person eligible for health benefits under section 1079 or 1086 of title 10, United States Code.

(2) The term “TRICARE-authorized provider” means a facility, doctor, or other provider of health care services—

(A) that meets the licensing and credentialing certification requirements in the State where the services are rendered;

(B) that meets requirements under regulations relating to TRICARE for the type of health care services rendered; and

(C) that has accepted reimbursement by the Secretary of Defense as payment for services rendered during the 12-month period preceding the date of the most recently updated provider information provided to households under the plan required by subsection (a).

(d) SUBMISSION OF PLAN.—Not later than March 31, 2004, the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives the plan required by subsection (a), together with a schedule for implementation of the plan.

## TITLE X—

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### SEC. 1022. [10 U.S.C. 371 note] AUTHORITY FOR JOINT TASK FORCES TO PROVIDE SUPPORT TO LAW ENFORCEMENT AGENCIES CONDUCTING COUNTER-TERRORISM ACTIVITIES.

(a) AUTHORITY.—A joint task force of the Department of Defense that provides support to law enforcement agencies conducting counter-drug activities may also provide, subject to all applicable laws and regulations, support to law enforcement agencies conducting counter-terrorism activities or counter-transnational organized crime activities.

(b) AVAILABILITY OF FUNDS.—During fiscal years 2006 through 2027, funds for drug interdiction and counter-drug activities that are available to a joint task force to support counter-drug activities



may also be used to provide the counter-terrorism or counter-transnational organized crime support authorized by subsection (a).

(c) ANNUAL REPORT.—Not later than December 31 of each year in which the authority in subsection (a) is in effect, the Secretary of Defense shall submit to the congressional defense committees a report setting forth, for the one-year period ending on the date of such report, the following:

(1) An assessment of the effect on counter-drug, counter-transnational organized crime, and counter-terrorism activities and objectives of using counter-drug funds of a joint task force to provide counter-terrorism or counter-transnational organized crime support authorized by subsection (a).

(2) A description of the type of support and any recipient of support provided under subsection (a), and a description of the objectives of such support.

(3) A list of current joint task forces exercising the authority under subsection (a).

(4) A certification by the Secretary of Defense that any support provided under subsection (a) during such one-year period was provided in compliance with the requirements of subsection (d).

(d)(1) Support for counter-terrorism or counter-transnational organized crime activities provided under subsection (a) may only be provided if the Secretary of Defense determines that the objectives of using the counter-drug funds of any joint task force to provide such support relate significantly to the objectives of providing support for counter-drug activities by that joint task force or any other joint task force.

(2) The Secretary of Defense may waive the requirements of paragraph (1) if the Secretary determines that such a waiver is vital to the national security interests of the United States. The Secretary shall promptly submit to the congressional defense committees notice in writing of any waiver issued under this subparagraph, together with a description of the vital national security interests associated with the support covered by such waiver.

(e) DEFINITIONS.—(1) In this section, the term “transnational organized crime” has the meaning given such term in section 284(i) of title 10, United States Code.

(2) For purposes of applying the definition of transnational organized crime under paragraph (1) to this section, the term “illegal means”, as it appears in such definition, includes the trafficking of money, human trafficking, illicit financial flows, illegal trade in natural resources and wildlife, trade in illegal drugs and weapons, and other forms of illegal means determined by the Secretary of Defense.

(2)<sup>1</sup> For purposes of applying the definition of transnational organized crime under paragraph (1) to this section, the term “illegal means”, as it appears in such definition, includes the trafficking of money, human trafficking, illicit financial flows, illegal trade in natural resources and wildlife, trade in illegal drugs and weapons,

<sup>1</sup>This duplicate paragraph (2) is so in law and was added by section 1022(b)(2) of Public Law 116-92.

and other forms of illegal means determined by the Secretary of Defense.

## TITLE XII—

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### SEC. 1211. [50 U.S.C. App. 2404 note] REVIEW OF EXPORT PROTECTIONS FOR MILITARY SUPERIORITY RESOURCES.

(a) REVIEW REQUIRED.—The Secretary of Defense shall carry out a review—

(1) to identify goods or technology (as defined in section 16 of the Export Administration Act of 1979 (50 U.S.C. App. 2415)) that, if obtained by a potential adversary, could significantly undermine the military superiority or qualitative military advantage of the United States over potential adversaries or otherwise contribute to the acquisition of weapons of mass destruction and their delivery systems; and

(2) to determine whether any of the items or technologies identified under paragraph (1) are not currently controlled for export purposes on either the Commerce Control List or the United States Munitions List.

(b) ANNUAL REPORTS.—(1) Not later than March 1, 2004, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives an unclassified report, with a classified annex as necessary, on the results of the review under subsection (a).

(2) For each of the next two years after the submission of the report under paragraph (1), the Secretary shall submit to those committees an update on that report. Such updates shall be submitted not later than March 1, 2005, and not later than March 1, 2006.

### SEC. 1231. [22 U.S.C. 1928 note] ANNUAL REPORT ON THE NATO PRAGUE CAPABILITIES COMMITMENT AND THE NATO RESPONSE FORCE.

(a) FINDINGS.—Congress makes the following findings:

(1) At the meeting of the North Atlantic Council held in Prague in November 2002, the heads of states and governments of the North Atlantic Treaty Organization (NATO) launched a Prague Capabilities Commitment and decided to create a NATO Response Force.

(2) The Prague Capabilities Commitment is part of the continuing NATO effort to improve and develop new military capabilities for modern warfare in a high-threat environment. As part of this commitment, individual NATO allies have made firm and specific political commitments to improve their capabilities in the areas of—

- (A) chemical, biological, radiological, and nuclear defense;
- (B) intelligence, surveillance, and target acquisition;
- (C) air-to-ground surveillance;
- (D) command, control, and communications;

(E) combat effectiveness, including precision guided munitions and suppression of enemy air defenses;

(F) strategic air and sea lift;

(G) air-to-air refueling; and

(H) deployable combat support and combat service support units.

(3) The NATO Response Force is envisioned to be a technologically advanced, flexible, deployable, interoperable, and sustainable force that includes land, sea, and air elements ready to move quickly to wherever needed, as determined by the North Atlantic Council. The NATO Response Force is also intended to be a catalyst for focusing and promoting improvements in NATO's military capabilities. It is expected to have initial operational capability by October 2004, and full operational capability by October 2006.

(b) ANNUAL REPORT.—(1) Not later than January 31 of each year through 2008, the Secretary of Defense shall submit to the congressional committees specified in paragraph (5) a report, to be prepared in consultation with the Secretary of State, on implementation of the Prague Capabilities Commitment and development of the NATO Response Force by the member nations of the North Atlantic Treaty Organization (NATO).

(2) The annual report under this subsection shall include the following matters:

(A) A description of the actions taken by NATO as a whole and by each member nation of NATO other than the United States to further the Prague Capabilities Commitment, including any actions taken to improve capability shortfalls in the areas identified for improvement.

(B) A description of the actions taken by NATO as a whole and by each member nation of NATO, including the United States, to create the NATO Response Force.

(C) A discussion of the relationship between NATO's efforts to improve capabilities through the Prague Capabilities Commitment and those of the European Union to enhance European capabilities through the European Capabilities Action Plan, including the extent to which they are mutually reinforcing.

(D) A discussion of NATO decisionmaking on the implementation of the Prague Capabilities Commitment and the development of the NATO Response Force, including—

(i) an assessment of whether the Prague Capabilities Commitment and the NATO Response Force are the sole jurisdiction of the Defense Planning Committee, the North Atlantic Council, or the Military Committee;

(ii) a description of the circumstances which led to the defense, military, security, and nuclear decisions of NATO on matters such as the Prague Capabilities Commitment and the NATO Response Force being made in bodies other than the Defense Planning Committee;

(iii) a description of the extent to which any member that does not participate in the integrated military structure of NATO contributes to each of the component committees of NATO, including any and all committees rel-

evant to the Prague Capabilities Commitment and the NATO Response Force;

(iv) a description of the extent to which any member that does not participate in the integrated military structure of NATO participates in deliberations and decisions of NATO on resource policy, contribution ceilings, infrastructure, force structure, modernization, threat assessments, training, exercises, deployments, and other issues related to the Prague Capabilities Commitment or the NATO Response Force;

(v) a description and assessment of the impediments, if any, that would preclude or limit NATO from conducting deliberations and making decisions on matters such as the Prague Capabilities Commitment or the NATO Response Force solely in the Defense Planning Committee; and

(vi) the recommendations of the Secretary of Defense on streamlining defense, military, and security decision-making within NATO relating to the Prague Capabilities Commitment, the NATO Response Force, and other matters, including an assessment of the feasibility and advisability of the greater utilization of the Defense Planning Committee for such purposes.

(3) In the case of a report under this subsection after the first such report, the information submitted in such report under any of clauses (i) through (vi) of subparagraph (D) of paragraph (2) may consist solely of an update of any information previously submitted under that clause in a preceding report under this subsection.

(4) Each report under this subsection shall be submitted in unclassified form, but may also be submitted in classified form if necessary.

(5) The committees specified in this paragraph are—

(A) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

(B) the Committee on Armed Services and the Committee on International Relations of the House of Representatives.

### **TITLE XIII—COOPERATIVE THREAT REDUCTION WITH STATES OF THE FORMER SOVIET UNION**

#### **SEC. 1301. [22 U.S.C. 5960 note] SPECIFICATION OF COOPERATIVE THREAT REDUCTION PROGRAMS AND FUNDS.**

(a) SPECIFICATION OF CTR PROGRAMS.—For purposes of section 301 and other provisions of this Act, Cooperative Threat Reduction programs are the programs specified in section 1501(b) of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104–201; 110 Stat. 2731; 50 U.S.C. 2362 note).

(b) FISCAL YEAR 2004 COOPERATIVE THREAT REDUCTION FUNDS DEFINED.—As used in this title, the term “fiscal year 2004 Cooperative Threat Reduction funds” means the funds appropriated pursuant to the authorization of appropriations in section 301 for Cooperative Threat Reduction programs.

(c) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to the authorization of appropriations in section 301 for Cooperative

Threat Reduction programs shall be available for obligation for three fiscal years.

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## TITLE XVI—DEFENSE BIOMEDICAL COUNTERMEASURES

### SEC. 1601. [10 U.S.C. 2370a note] RESEARCH AND DEVELOPMENT OF DEFENSE BIOMEDICAL COUNTERMEASURES.

(a) IN GENERAL.—The Secretary of Defense (in this section referred to as the “Secretary”) shall carry out a program to accelerate the research, development and procurement of biomedical countermeasures, including but not limited to therapeutics and vaccines, for the protection of the Armed Forces from attack by one or more biological, chemical, radiological, or nuclear agents.

(b) INTERAGENCY COOPERATION.—(1) In carrying out the program under subsection (a), the Secretary may enter into interagency agreements and other collaborative undertakings with other Federal agencies.

(2) The Secretary, through regular, structured, and close consultation with the Secretary of Health and Human Services and the Secretary of Homeland Security, shall ensure that the activities of the Department of Defense in carrying out the program are coordinated with, complement, and do not unnecessarily duplicate activities of the Department of Health and Human Services or the Department of Homeland Security.

(c) EXPEDITED PROCUREMENT AUTHORITY.—(1) For any procurement of property or services for use (as determined by the Secretary) in performing, administering, or supporting biomedical countermeasures research and development, the Secretary may, when appropriate, use streamlined acquisition procedures and other expedited procurement procedures authorized in—

(A) section 1903 of title 41, United States Code; and

(B) sections 2371 and 2371b of title 10, United States Code.

(2) Notwithstanding paragraph (1) and the provisions of law referred to in such paragraph, each of the following provisions shall apply to the procurements described in this subsection to the same extent that such provisions would apply to such procurements in the absence of paragraph (1):

(A) Chapter 37 of title 40, United States Code (relating to contract work hours and safety standards).

(B) Section 8703(a) of title 41, United States Code.

(C) Section 2313 of title 10, United States Code (relating to the examination of contractor records).

(3) The Secretary shall institute appropriate internal controls for use of the authority under paragraph (1), including requirements for documenting the justification for each use of such authority.

(d) DEPARTMENT OF DEFENSE FACILITIES AUTHORITY.—(1) If the Secretary determines that it is necessary to acquire, lease, construct, or improve laboratories, research facilities, and other real property of the Department of Defense in order to carry out the program under this section, the Secretary may do so using the procedures set forth in paragraphs (2), (3), (4), and (5).

(2) The Secretary shall use existing construction authorities provided by subchapter I of chapter 169 of title 10, United States Code, to the maximum extent possible.

(3)(A) If the Secretary determines that use of authorities in paragraph (2) would prevent the Department from meeting a specific facility requirement for the program, the Secretary shall submit to the congressional defense committees advance notification, which shall include the following:

(i) Certification by the Secretary that use of existing construction authorities would prevent the Department from meeting the specific facility requirement.

(ii) A detailed explanation of the reasons why existing authorities cannot be used.

(iii) A justification of the facility requirement.

(iv) Construction project data and estimated cost.

(v) Identification of the source or sources of the funds proposed to be expended.

(B) The facility project may be carried out only after the end of the 21-day period beginning on the date the notification is received by the congressional defense committees.

(4) If the Secretary determines: (A) that the facility is vital to national security or to the protection of health, safety, or the quality of the environment; and (B) the requirement for the facility is so urgent that the advance notification in paragraph (3) and the subsequent 21-day deferral of the facility project would threaten the life, health, or safety of personnel, or would otherwise jeopardize national security, the Secretary may obligate funds for the facility and notify the congressional defense committees within seven days after the date on which appropriated funds are obligated with the information required in paragraph (3).

(5) Nothing in this section shall be construed to authorize the Secretary to acquire, construct, lease, or improve a facility having general utility beyond the specific purposes of the program.

(6) In this subsection, the term “facility” has the meaning given the term in section 2801(c) of title 10, United States Code.

(e) **AUTHORITY FOR PERSONAL SERVICES CONTRACTS.**—(1) Subject to paragraph (2), the authority provided by section 1091 of title 10, United States Code, for personal services contracts to carry out health care responsibilities in medical treatment facilities of the Department of Defense shall also be available, subject to the same terms and conditions, for personal services contracts to carry out research and development activities under this section. The number of individuals whose personal services are obtained under this subsection may not exceed 30 at any time.

(2) The authority provided by such section 1091 may not be used for a personal services contract unless the contracting officer for the contract ensures that—

(A) the services to be procured are urgent or unique; and

(B) it would not be practicable for the Department of Defense to obtain such services by other measures.

(f) **STREAMLINED PERSONNEL AUTHORITY.**—(1) The Secretary may appoint highly qualified experts, including scientific and technical personnel, to carry out research and development under this section in accordance with the authorities provided in section 342

of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–337; 108 Stat. 2721), section 1101 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261), and section 1101 of this Act.

(2) The Secretary may use the authority under paragraph (1) only upon a determination by the Secretary that use of such authority is necessary to accelerate the research and development under the program.

(3) The Secretary shall institute appropriate internal controls for each use of the authority under paragraph (1).

**SEC. 1602. [10 U.S.C. 2302 note] PROCUREMENT OF DEFENSE BIO-MEDICAL COUNTERMEASURES.**

(a) DETERMINATION OF MATERIAL THREATS.—(1) The Secretary of Defense (in this section referred to as the “Secretary”) shall on an ongoing basis—

(A) assess current and emerging threats of use of biological, chemical, radiological, and nuclear agents; and

(B) identify, on the basis of such assessment, those agents that present a material risk of use against the Armed Forces.

(2) The Secretary shall on an ongoing basis—

(A) assess the potential consequences to the health of members of the Armed Forces of use against the Armed Forces of the agents identified under paragraph (1)(B); and

(B) identify, on the basis of such assessment, those agents for which countermeasures are necessary to protect the health of members of the Armed Forces.

(b) ASSESSMENT OF AVAILABILITY AND APPROPRIATENESS OF COUNTERMEASURES.—The Secretary shall on an ongoing basis assess the availability and appropriateness of specific countermeasures to address specific threats identified under subsection (a).

(c) SECRETARY’S DETERMINATION OF COUNTERMEASURES APPROPRIATE FOR PROCUREMENT.—(1) The Secretary, in accordance with paragraph (2), shall on an ongoing basis identify specific countermeasures that the Secretary determines to be appropriate for procurement for the Department of Defense stockpile of biomedical countermeasures.

(2) The Secretary may not identify a specific countermeasure under paragraph (1) unless the Secretary determines that—

(A) the countermeasure is a qualified countermeasure; and

(B) it is reasonable to expect that producing and delivering, within 5 years, the quantity of that countermeasure required to meet the needs of the Department (as determined by the Secretary) is feasible.

(d) INTERAGENCY COOPERATION.—(1) Activities of the Secretary under this section shall be carried out in regular, structured, and close consultation and coordination with the Secretaries of Homeland Security and Health and Human Services, including the activities described in subsections (a), (b), and (c) and those activities with respect to interagency agreements described in paragraph (2).

(2) The Secretary may enter into an interagency agreement with the Secretaries of Homeland Security and Health and Human Services to provide for acquisition by the Secretary of Defense for use by the Armed Forces of biomedical countermeasures procured for the Strategic National Stockpile by the Secretary of Health and

Human Services. The Secretary may transfer such funds to the Secretary of Health and Human Services as are necessary to carry out such agreements (including administrative costs of the Secretary of Health and Human Services), and the Secretary of Health and Human Services may expend any such transferred funds to procure such countermeasures for use by the Armed Forces, or to replenish the stockpile. The Secretaries are authorized to establish such terms and conditions for such agreements as the Secretaries determine to be in the public interest. The transfer authority provided under this paragraph is in addition to any other transfer authority available to the Secretary.

(e) DEFINITIONS.—In this section:

(1) The term “qualified countermeasure” means a biomedical countermeasure—

(A) that is approved under section 505(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) or licensed under section 351 of the Public Health Service Act (42 U.S.C. 262), or that is approved under section 515 or cleared under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e and 360) for use as such a countermeasure to a biological, chemical, radiological, or nuclear agent identified as a material threat under subsection (a); or

(B) with respect to which the Secretary of Health and Human Services makes a determination that sufficient and satisfactory clinical experience or research data (including data, if available, from preclinical and clinical trials) exists to support a reasonable conclusion that the product will qualify for such approval or licensing for use as such a countermeasure.

(2) The term “biomedical countermeasure” means a drug (as defined in section 201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1))), device (as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h))), or biological product (as defined in section 351(i) of the Public Health Service Act (42 U.S.C. 262(i))) that is—

(A) used to treat, identify, or prevent harm from any biological, chemical, radiological, or nuclear agent that may cause a military health emergency affecting the Armed Forces; or

(B) used to treat, identify, or prevent harm from a condition that may result in adverse health consequences or death and may be caused by administering a drug or biological product that is used as described in subparagraph (A).

(3) The term “Strategic National Stockpile” means the stockpile established under section 121(a) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (42 U.S.C. 300hh–12(a)).

(f) FUNDING.—Of the amount authorized to be appropriated for the Department of Defense and available within the transfer authority established under section 1001 of this Act for fiscal year 2004 and for each fiscal year thereafter, such sums are authorized



as may be necessary for the costs incurred by the Secretary in the procurement of countermeasures under this section.

## TITLE XXVIII—GENERAL PROVISIONS

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### Subtitle A—Military Construction Program and Military Family Housing Changes

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#### SEC. 2808. AUTHORITY TO USE OPERATION AND MAINTENANCE FUNDS FOR CERTAIN CONSTRUCTION PROJECTS OUT- SIDE THE UNITED STATES.

(a) IN GENERAL.—The Secretary of Defense may obligate appropriated funds available for operation and maintenance to carry out a construction project outside the United States that the Secretary determines meets each of the following conditions:

(1) The construction is necessary to meet urgent military operational requirements of a temporary nature involving the use of the Armed Forces in support of a declaration of war, the declaration by the President of a national emergency under section 201 of the National Emergencies Act (50 U.S.C. 1621), or a contingency operation.

(2) The construction is not carried out at a military installation where the United States is reasonably expected to have a long-term presence.

(3) The United States has no intention of using the construction after the operational requirements have been satisfied.

(4) The level of construction is the minimum necessary to meet the temporary operational requirements.

(b) NOTIFICATION OF OBLIGATION OF FUNDS.—Before using appropriated funds available for operation and maintenance to carry out a construction project outside the United States that has an estimated cost in excess of the amounts authorized for unspecified minor military construction projects under section 2805(c) of title 10, United States Code, the Secretary of Defense shall submit to the congressional committees specified in subsection (d) a notice regarding the construction project. The project may be carried out only after the end of the 14-day period beginning on the date the notice is received by the committees, including when a copy of the notification is provided in an electronic medium pursuant to section 480 of title 10, United States Code. The notice shall include the following:

(1) Certification that the conditions specified in subsection (a) are satisfied with regard to the construction project.

(2) A description of the purpose for which appropriated funds available for operation and maintenance are being obligated.

(3) All relevant documentation detailing the construction project.

(4) An estimate of the total amount obligated for the construction.

(c) ANNUAL LIMITATION ON USE OF AUTHORITY.—(1) The total cost of the construction projects carried out under the authority of this section using, in whole or in part, appropriated funds available for operation and maintenance shall not exceed \$50,000,000 during each of the following periods:

(A) The period beginning October 1, 2021, and ending on the earlier of December 31, 2022, or the date of the enactment of an Act authorizing funds for military activities of the Department of Defense for fiscal year 2023.

(B) The period beginning October 1, 2022, and ending on the earlier of December 31, 2023, or the date of the enactment of an Act authorizing funds for military activities of the Department of Defense for fiscal year 2024.

(2) Notwithstanding paragraph (1), the Secretary of Defense may authorize the obligation under this section of not more than an additional \$10,000,000 of appropriated funds available for operation and maintenance for a fiscal year if the Secretary determines that the additional funds are needed for costs associated with contract closeouts.

(3) The total amount of operation and maintenance funds used for a single construction project carried out under the authority of this section shall not exceed \$15,000,000. The Secretary of Defense may waive this limitation on a project-by-project basis. This waiver authority may not be delegated.

(d) CONGRESSIONAL COMMITTEES.—The congressional committees referred to in this section are the following:

(1) The Committee on Armed Services and the Subcommittee on Defense and the Subcommittee on Military Construction, Veterans Affairs, and Related Agencies of the Committee on Appropriations of the Senate.

(2) The Committee on Armed Services and the Subcommittee on Defense and the Subcommittee on Military Construction, Veterans Affairs, and Related Agencies of the Committee on Appropriations of the House of Representatives.

(e) EFFECT OF FAILURE TO SUBMIT PROJECT NOTIFICATIONS.—If the advance notice of the proposed obligation of the funds for a construction project required by subsection (b) is not submitted to the congressional committees specified in subsection (d) by the required date, appropriated funds available for operation and maintenance may not be obligated or expended after that date under the authority of this section to carry out construction projects outside the United States until the date on which the notice is finally submitted.

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## Subtitle C—Base Closure and Realignment

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**SEC. 2822. [10 U.S.C. 2687 note] CONSIDERATION OF SURGE REQUIREMENTS IN 2005 ROUND OF BASE REALIGNMENTS AND CLOSURES.**

(a) DETERMINATION OF SURGE REQUIREMENTS.—The Secretary of Defense shall assess the probable threats to national security and, as part of such assessment, determine the potential, prudent, surge requirements to meet those threats.

(b) USE OF DETERMINATION.—The Secretary shall use the surge requirements determination made under subsection (a) in the base realignment and closure process under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note), as amended by title XXX of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1342).

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**TITLE XXXIII—NATIONAL DEFENSE STOCKPILE****SEC. 3301. AUTHORIZED USES OF NATIONAL DEFENSE STOCKPILE FUNDS.**

(a) OBLIGATION OF STOCKPILE FUNDS.—During fiscal year 2004, the National Defense Stockpile Manager may obligate up to \$69,701,000 of the funds in the National Defense Stockpile Transaction Fund established under subsection (a) of section 9 of the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98h) for the authorized uses of such funds under subsection (b)(2) of such section, including the disposal of hazardous materials that are environmentally sensitive.

(b) ADDITIONAL OBLIGATIONS.—The National Defense Stockpile Manager may obligate amounts in excess of the amount specified in subsection (a) if the National Defense Stockpile Manager notifies Congress that extraordinary or emergency conditions necessitate the additional obligations. The National Defense Stockpile Manager may make the additional obligations described in the notification after the end of the 45-day period beginning on the date on which Congress receives the notification.

(c) LIMITATIONS.—The authorities provided by this section shall be subject to such limitations as may be provided in appropriations Acts.